

SPECIAL FUND OVERPAYMENTS
PRELIMINARY REPORT TO
GOVERNOR ANDY BESHEAR

Submitted by:

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Introduction

The Kentucky Department of Workers' Claims has discovered that more than \$560,000.00 of income benefits have been overpaid to certain Special Fund claimants. The purpose of this report is to provide information regarding how overpayments occurred, the extent of those overpayments, the steps being taken to recover funds overpaid, and the procedures the Department is implementing to prevent or reduce the incidence of future overpayments. In order to provide context, a brief description of the purpose, evolution and funding mechanism of the Special Fund will be provided.

Purpose and Evolution of the Special Fund

Kentucky's Special Fund ("Fund") was established to provide income benefits to injured workers. When created by the General Assembly in 1946, the Special Fund was named the "Subsequent Injury Fund" and provided benefits to employees with preexisting non work-related disability who sustained subsequent, compensable work-related injuries. Similar funds were established in other states to encourage employers to hire veterans returning from war with service-connected disability. When such an employee suffered a work-related injury, the employer was liable only for that portion of the occupational disability attributable solely to the work injury. That portion of the occupational disability attributable to the preexisting disability was the liability of the Fund. The Fund compensated only injuries and excluded occupational disease claims.

In 1960, the Fund was expanded to include occupational diseases. The name was changed to the "Special Fund" in 1964 and in following years, the liability of the Fund was expanded to include dormant, non-disabling diseases and conditions that were aroused into disabling reality by a work-related injury or exposure. In injury claims, if the work incident aroused a pre-existing dormant non-disabling condition into disabling (symptomatic) reality, liability for the resulting disability was apportioned between the employer and the Fund. By way of illustration, John Doe bent down, picked up a shoebox at work, and in doing so suffered a herniated lumbar disc. Medical evidence established that Doe had preexisting degenerative disc disease in his lumbar spine that was not producing any symptoms before the work incident. That evidence established that "but for" the preexisting dormant

condition, the act of bending down to pick up a shoebox would not have resulted in a disc herniation. In light of this evidence, liability for an award of permanent disability benefits was apportioned between the employer and the Fund and each paid a portion of the weekly income benefit. The Fund was, essentially, a shared risk pool in which all employers were required to participate.

The implementation of the black lung program in 1972 resulted in many more claims asserted against the Fund with the Fund initially paying 75% of the liability in most claims. As a result of HB 1 of the 1996 Extraordinary Session, the Fund was essentially “closed” to further claims. The Fund has no liability for any claim in which the injury or last exposure occurred on or after December 12, 1996 and is essentially in run-off status with respect to its legacy claim.

Funding Source

Workers’ compensation income benefits are paid to Special Fund claimants from the benefit reserve account administered by the Kentucky Workers’ Compensation Funding Commission. KRS 342.122 requires the Funding Commission to impose an assessment on workers’ compensation insurance premiums collected by insurance carriers and simulated premium calculated by self-insured employers for the purpose of funding and pre-funding the liabilities of the Fund (and to fund the operation of the Labor Cabinet and the Funding Commission). Insurance carriers collect the assessment from their insureds and transmit the funds to the Funding Commission. Self-insured employers pay the assessment directly to the Funding Commission on a quarterly basis. The 2020 Special Fund assessment rate is 6.41%. No benefits are paid from the General Fund.

Current Payees and Benefit Payments

The Fund currently pays bi-weekly benefits to 4,017 claimants in the total sum of \$1.6 Million, yielding an annual payout of approximately \$42 Million. Benefits are payable for the lifetime of the claimant. The Fund is only liable for indemnity benefits; the employer’s insurance carrier is liable for all medical benefits.

Investigation by the Office of the Inspector General

On December 3, 2018, the Office of the Inspector General (OIG) was requested to investigate allegations of theft of funds via the Division of Workers' Compensation Funds (Special Fund). The OIG was also was investigating allegations of misappropriations and mismanagement of federal and restricted funds in the Kentucky Occupational Safety and Health program (KOSH).

On November 15, 2019, the OIG issued a Report of Investigation regarding the Special Fund and KOSH allegations. The Report found no employee fraud or misappropriations of restricted or federal funds in the Special Fund or KOSH program; however, the OIG determined numerous areas of mismanagement by both KOSH and Special Funds programs during the Bevin Administration. The OIG Report also determined the significant over payment of benefits to deceased claimants as staff failed to timely identify a beneficiary's death.

The Report found over the past three (3) years, the Special Fund had three different Directors as well as an Assistant Director detailed to the Director's position. During FY 2018-2019, all Special Fund employees either retired, tendered their resignation, or transferred to other state positions outside the Labor Cabinet creating a void of leadership, experience and historical knowledge.

Overpayment of Benefits

Overpayment of benefits generally occurs when the Fund is not timely notified, or does not learn independently, of a beneficiary's death.

Historically, the staff of the Fund have reviewed the Social Security Death Index database to look for social security numbers that match numbers in the Fund's payee database. The Fund pays for access to this federal database. When a match is identified, Fund staff are to enter that information in the Claims Payment Management System in order to terminate benefit payments. Until July 2017, the Special Fund was a part of the Division of Workers' Compensation Funds in the Department of Workplace Standards in the Labor Cabinet. As a result of a reorganization by the Bevin Administration, the Division of Workers' Compensation Funds (which, at that time included the Special Fund and the Coal Workers' Pneumoconiosis Fund) was administratively assigned to the Department

of Workers' Claims. At that same time, the Labor Cabinet physically relocated the Fund operation to the building in which the Funding Commission is located. The Cabinet also assigned on-site personnel management authority to the Executive Director of the Funding Commission in anticipation of legislation that would remove the Special Fund from the Department of Workers' Claims and place it within the authority of the Funding Commission. Although such legislation was introduced in 2018 and again in 2019, it was not enacted.

As noted in the report of the OIG, during FY8-19 all employees left the Special Fund. That exodus left the Fund with a critical staffing shortage that the Labor Cabinet is now aggressively addressing. The loss of institutional knowledge regarding the processes and procedures of the Special Fund has proven to be a particular challenge.

In the spring of 2019, Deputy Commissioner Robert Milligan was appointed acting director of the Special Fund and determined that the Fund had not been informed of, or had not independently discovered, the deaths of some beneficiaries. His conclusion was that the Social Security Death Index matching process was not reliable. It was determined that Google searches were more likely to provide accurate information regarding the status of beneficiaries. Accordingly, the Department of Workers' Claims enlisted the assistance of each of its divisions in making over 4,500 Google searches to identify deceased beneficiaries. Those searches revealed over 300 deceased beneficiaries who had not been removed from the Fund's database.

As a result of this Special Fund program review, the Fund has identified sixty (60) accounts that have or have had overpayment balances. Outstanding overpayments initially amounted to **\$562,573.83**.

Since the appointment of Secretary Roberts and Inspector General Wright in December of 2019, the OIG has investigated and identified **\$252,595.12** in overpayments that are recoverable, providing banking information, account balances, and contact information to the Department of Workers' Claims. OIG has referred back to the Department twenty-one (21) of the thirty-four (34) referred cases to pursue further collection efforts. Those recoverables are further broken down as:

- Funds repaid, returned or reclaimed - \$85,541.03 (cash in hand)
- Funds sitting in bank accounts to be recovered - \$107,662.16

- Funds requiring criminal, civil, or repayment plans - \$59,391.93

Special Fund still has overpayments amounting to **\$309,978.71** that remain to be investigated and recouped through the combined efforts of OIG and the Department of Workers' Claims. Included in this amount:

- are twenty-six (26) "smaller SF cases" all under \$1,500.00, totaling \$10,048.88, which to date have not required investigative efforts from OIG
- and thirteen (13) active OIG cases, totaling a potential \$299,929.83 in overpayments.

Conclusion

The Special Fund has paid more than \$560,000 to individuals that had passed away. Since December 10, 2019, the new administration is working to collect the wrongful payments and correct the overall problem. The Department is further committed to cooperating with the Inspector General in discovering potential fraudulent activity and pursuing prosecution when appropriate. Finally, the Department is committed to aggressive pursuit of overpayment collection activity in order to protect the integrity of the benefit reserve account.